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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVELLOUS AFRIKAN WARRIOR  
GREENE,

Petitioner,

v.

CA REPUBLIC SACRAMENTO,

Respondents.

No. 2:14-cv-2959 JAM AC P

ORDER AND FINDINGS &  
RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se who challenges his 2002 conviction in the Sacramento County Superior Court.

On February 12, 2015, the previously assigned Magistrate Judge issued Findings and Recommendations recommending this case be dismissed for petitioner’s failure to comply with the court’s order that he file an in forma pauperis affidavit or pay the filing fee. ECF No. 4. Petitioner submitted a copy of his prison trust account statement on February 18, 2015 (ECF No. 5) and a second copy was filed by the court on March 16, 2015 (ECF No. 6). As the result of a related case order, this case was reassigned to the undersigned and District Judge Mendez on May 14, 2015. ECF No. 7. Although petitioner has failed to file a complete application to proceed in forma pauperis, he has filed copies of his prison trust account statement which show he is unable to afford the costs of suit. ECF Nos. 5, 6. Petitioner will be permitted to proceed in forma pauperis and the undersigned will vacate the previously issued Findings and Recommendations (ECF No. 4). The court will instead recommend that the petition be dismissed as duplicative.

1           The court’s records reveal<sup>1</sup> that petitioner filed two nearly identical petitions for writs of  
2 habeas corpus pursuant to 28 U.S.C. § 2254. The cases were initiated approximately four and a  
3 half months apart in this court. The cases are the earlier filed Greene v. Pelican Bay State Prison,  
4 Case No. 2:14-cv-01826 JAM AC P, and this case, Greene v. CA Republic Sacramento, Case No.  
5 2:14-cv-02959 JAM AC P (previously 2:14-cv-02959 WBS KJN P). Both petitions challenge  
6 plaintiff’s 2002 conviction and allege that the trial judge was biased and coerced plaintiff into  
7 taking a “People v. West plea” outside the presence of his attorney; that he was sexually assaulted  
8 while in prison; that he was medicated and not competent; and that he was innocent of the  
9 charges. Compare ECF No. 1 with August 4, 2014 Petition, Greene v. Pelican Bay State Prison,  
10 Case No. 2:14-cv-01826 JAM AC P. In Greene v. Pelican Bay State Prison, the undersigned  
11 directed respondents to file a response to the petition and a motion to dismiss is currently  
12 pending. The petition in this case has yet to be screened or served. For these reasons, the court  
13 will recommend that the instant petition be dismissed as duplicative.

14           Accordingly, IT IS HEREBY ORDERED that:

- 15           1. The previously issued Findings and Recommendations (ECF No. 4) are vacated; and
- 16           2. Petitioner’s motion to proceed in forma pauperis (ECF Nos. 5, 6) is granted.

17           IT IS FURTHER RECOMMENDED that:

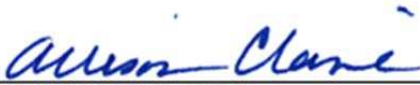
- 18           1. The instant action be dismissed without prejudice, because it is duplicative of the  
19 earlier filed Greene v. Pelican Bay State Prison, Case No. 2:14-cv-01826 JAM AC P.

20           These findings and recommendations are submitted to the United States District Judge  
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
22 after being served with these findings and recommendations, petitioner may file written  
23 objections with the court. Such a document should be captioned “Objections to Magistrate  
24 Judge’s Findings and Recommendations.” Petitioner is advised that failure to file objections

25 \_\_\_\_\_  
26 <sup>1</sup> This court may take judicial notice of its own records and the records of other courts. See  
27 United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631  
28 F.2d 118, 119 (9th Cir. 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts  
that are capable of accurate determination by sources whose accuracy cannot reasonably be  
questioned).

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: May 28, 2015

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5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE  
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